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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the ADALAH - Legal Center for Arab Minority Rights in Israel, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Ending Israeli Impunity for Police Violence against Palestinian Citizens of Israel*

Adalah – The Legal Center for Arab Minority Rights in Israel and Mezan for Human Rights welcome the opportunity to contribute to the Human Rights Council (HRC), particularly Agenda Item 3 and the Interactive Dialogue with the SR on Minority Issues. This submission demonstrates Israel's persistent failures to investigate incidents of police violence and killing of Palestinian citizens of Israel, and contextualizes the impunity of Israeli security forces within the state's refusal to explicitly enshrine the right to equality of all citizens.

On 8 November 2014, Israeli police killed twenty-two year old Kir El Din Hamdan Amara, a Palestinian citizen of Israel, during a law enforcement operation in Kufr Kana, Israel. Kir El Din was shot at least two times though he did not pose any real danger or threat to the police.[1] According to media reports, the Israeli Police Investigation Department of the Israeli Ministry of Justice (Mashash), is conducting an internal-disciplinary investigation into the killing of Kir El Din, rather than a criminal investigation.[2] The policemen involved in his killing have not been suspended, and continue their work.

Two months later, Israeli police killed two unarmed Palestinian citizens of Israel in Rahat, the largest Palestinian Bedouin city in the Negev in southern Israel. Twenty-two year old Sami al-Ja'ar was killed on 14 January, and four days later, when police clashed with protestors during al-Ja'ar's funeral procession, 45-year old Sami Ziadna died from excessive tear gas inhalation.[3] Civil society is calling for criminal investigations into the killings.[4]

These tragic deaths should be considered the result not only of the actions of individual police officers, but of a legal, social and political system in Israel that entrenches inequality on the basis of ethnic or national belonging. Palestinian citizens of Israel, who make up 20% of the population, are excluded from full consideration and protection of their human rights, including the right to life. Israeli security forces are consistently shielded from accountability for the acts of violence, creating a culture of impunity that further threatens the lives of Palestinian citizens of Israel.

1. Ongoing impunity for October 2000 killing of 13 Palestinian citizens of Israel

   2015 marks fifteen years since the October 2000 events when Israeli police and security forces killed 13 Palestinian citizens of Israel during demonstrations against the Israeli military's violent repression in the Occupied Palestinian Territory. October 2000, the killings and the injury of hundreds more, have formed a foundational cornerstone of the collective memory and consciousness of Palestinian citizens of Israel.

   The Israeli government-appointed Or Commission of Inquiry into the October 2000 events concluded, "in the events of October, these [potentially lethal] means were used in many incidents without any objective justification."[5] These means included the firing of live ammunition and rubber-coated steel bullets. The Or

[1] See Adalah, Press Release "Adalah Statement on the Killing of Kheir Hamdan by Israeli Police," 9 November 2014: http://www.adalah.org/en/content/view/8403

[2] See "Adalah, Mossawa and Mezan to Attorney General: Policemen who killed Kheir Hamdan continue to work, while Mahash fails to investigate crime." Press Release. 18 November 2014: http://www.adalah.org/en/content/view/8404

[3] See Ha'aretz, "Arabs of Israel, suspects until proven otherwise?" 21 January 2015: http://www.haaretz.com/opinion/1.638182

[4] See Negev Coexistence Forum for Civil Equality (Dukium), Press Release, "NCF to the Attorney General: Establish an Independent commission of inquiry for the killing of two Bedouin Citizen by the police," 22 January 2015: http://www.dukium.org/ncf-to-the-attorney-general-establish-an-independent-commission-of-inquiry-for-the-killing-of-two-bedouin-citizens-by-the-police/

[5] See the English "Official Summary of the Or Commission Report," p. 46, translated independently by Haaretz, available at: http://www.sikkuy.org.il/english/2004/OfficialSummary.pdf.

Commission report (2003) specifically linked the unjustified orders to open fire with the killings inflicted by the Israeli security forces, and ordered Mahash to thoroughly investigate the circumstances of the killings in order to determine criminal responsibility.[6] Mahash derives its investigative authority from Amendment No. 11 of the Police Ordinance (New Version) of 1971, which stipulates that every suspicion of misconduct committed by a police officer that is punishable by more than one year of imprisonment under the law, must be investigated.

In September 2005, nearly five years after the October 2000 events, Mahash published a report finding that there were no grounds to submit indictments for any of the 13 killings.[7] In 2008, former Israeli Attorney General Menachem Mazuz closed all case files into the October 2000 killings with no indictments submitted against any police officer or commander or any political leader responsible for the deaths.[8] According to Mazuz, "it would be improper to interfere with the decisions made by [Mahash]," since "the investigative material did not provide a sufficient evidentiary foundation that would enable the filing of indictments against any of the suspects".[9] It should be noted, that the AG's decision deviates from established legal custom regarding the evidentiary threshold required for the purpose of filing an indictment. Israel's refusal to properly investigate police violence has been criticized by the UN HRC as well as the UN CERD.[10]

2. New Data Demonstrates Failures of Mahash to Investigate Israeli Police Violence

In March 2014, Adalah approached the Ministry of Justice requesting information regarding complaints submitted to Mahash against police officers between the years 2011 and 2013.[11]

- Between 2011 and 2013, of the 11,282 complaints filed with Mahash, 93% of these complaints were closed;

- More than 72% of the complaints were closed without an investigation, under one of three reasons afforded by law: 1) lack of public interest; 2) the suspected person deemed not guilty; 3) and lack of evidence. However, Mahash also often closed complaints for reasons that are not accorded by the law, such as: 1) the identity of the suspect was unknown; 2) no law had been violated; 3) and Mahash did not have the authority to open an investigation into certain cases.

- 3.3% of the cases filed led to disciplinary actions against police officers; only 2.7% of the cases led to criminal prosecution.[12]

3. Lack of Protection for the Right to Equality

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[6] Ibid. especially pp 36-40

[7] See Adalah, Summary of the Findings and Conclusions of Adalah's 'The Accused' Report, prepared October 2006: http://www.adalah.org/uploads/oldfiles/features/october2000/accused-s-en.pdf

[8] Professor Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, criticized the Attorney General's decision in the October 2000 killings cases in his report of May 2008 to the UN Human Rights Council. Professor Alston concluded that the Attorney General's decision not to issue indictments "would appear to fall short of international standards." http://www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A-HRC-8-3.doc

[9] Israel, "Fourteenth to sixteenth periodic reports of States parties due in 2010," 17 January 2011, pp.48-49 (CERD/C/ISR/14-16)

[10] HRC Concluding Observations of 2010, para. 12 (CCPR/C/ISR/CO/3), and UN CERD Concluding Observations of 2007, para. 30 (CERD/C/ISR/CO/13).

[11] In general, the majority of complaints submitted to Mahash are those concerning the use of excessive force by police officers, which is defined as assault under Section 378 of the Penal Law of 1977 (hereinafter the "Penal Code"), and is punishable by up to two-year imprisonment.

[12] See Adalah Report, "Mahash: Green Light for Police Brutality," September 2014, Available online at http://www.adalah.org/uploads/oldfiles/Public/files/English/Newsletter/Sep-2014/Adalah-Mahash-Data-Report-Sep-2014.pdf

Despite the repeated call of numerous UN bodies on Israel to guarantee the right to non-discrimination for all citizens, the state refuses to enshrine the principle of equality in its Basic Laws.[13] The state's failure to explicitly guarantee the right to equality exposes the Palestinian minority in Israel to direct and indirect discrimination. The legal framework of inequality has allowed Israel to enact over 50 discriminatory laws against Palestinian citizens of Israel,[14] and creates a dangerous environment that ultimately shapes the police force's use of violence against the Arab minority.

Accordingly, the organizations call on the HRC to:

1. Condemn Israeli police violence, and call on Israel to open criminal investigations into the recent killings of Palestinian citizens of Israel;
2. Call on Israel to re-open investigations into the case of October 2000 and to establish an independent committee with the power to issue indictments;[15]
3. Demand that Israel give access to all UN Special Procedures, particularly those mandated to conduct independent fact-finding missions into both specific incidents and the systemic nature of police violence against minorities; and
4. Reiterate the international call on Israel to explicitly incorporate the principle of equality and non-discrimination into its laws

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*Mezan for Human Rights, an NGO without consultative status, also shares the views expressed in this statement.

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[13] UN Human Rights Committee (HRC) Concluding Observations of 2014 para 7. CCPR/C/ISR/CO/4; see also, HRC Concluding Observations of 2010, para. 6, CCPR/C/ISR/CO/3; The Committee on the Elimination of Racial Discrimination (CERD) Concluding Observations of 2012, para. 13 (CERD/C/ISR/CO/14-16); Concluding Observations of 2007, para. 16, 17 (CERD/C/ISR/CO/13); The Committee on the Elimination of Discrimination Against Women (CEDAW) Concluding Observations of 2011, para. 10, 11 (CEDAW/C/ISR/CO/5); The Committee on Economic, Social and Cultural Rights (CESCR) Concluding Observations of 2003, para. 16, 32 (E/C.12/1/Add.90).

[14] Adalah, Discriminatory Laws Database: http://www.adalah.org/en/law/index

[15] Adalah, "The Accused – Part II" (Executive Summary), October 2011: http://www.adalah.org/features/october2000/The_Accused_Report_II.doc. See also Adalah, "Adalah's New Report Exposes Serious Conflicts of Interests in Israel's State Investigatory Bodies regarding the October 2000 Killings of 13 Arab Citizens," 25 October 2011: http://www.adalah.org/eng/pressreleases/9_10_11.html; Adalah, "The Accused – Part I" (Executive Summary), October 2006 : http://www.adalah.org/features/october2000/accused-s-en.pdf